



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Broadnax, LLC
FOR
Brabble Shores Subdivision
Permit No. WP4-09-1318**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Broadnax, LLC regarding the Brabble Shores Subdivision, for the purpose of resolving certain violations of State Water Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms Broadnax the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Broadnax" means Broadnax, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Broadnax is a "person" within the meaning of Va. Code § 62.1-44.3.
3. "Compensation" or "Compensatory Mitigation" means actions taken that provide some form of substitute aquatic resource for the impacted aquatic resources.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
7. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
8. "Permit" or "Virginia Water Protection Permit" means Permit No. WP4-09-1318 issued to Broadnax, LLC under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344. The Permit was issued on March 3, 2011 and expires on March 2, 2018.
9. "Property" means the Brabble Shores subdivision located at 2060, 2088 and 2128 Shipyard Road in Chesapeake, Virginia, owned by Broadnax, LLC.
10. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
11. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
12. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
13. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
14. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
15. "Va. Code" means the Code of Virginia (1950), as amended.
16. "VAC" means the Virginia Administrative Code.
17. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

SECTION C: Findings of Fact and Conclusions of Law

1. Broadnax, LLC owns the Property, a 38-lot residential subdivision and associated infrastructure located in Chesapeake, Virginia.

2. The Permit authorizes Broadnax to permanently impact 0.42 acres of non-tidal forested wetlands, temporarily impact 0.03 acres of non-tidal forested wetlands and permanently impact 106 linear-feet of non-tidal channel at the Property.
3. On October 1, 2014, November 5, 2014 and November 25, 2014, DEQ staff inspected the Property for compliance with the requirements of the State Water Control Law, the Regulations and the Permit. DEQ staff observed that non-tidal forested wetland and non-tidal channel impacts had been taken. Reportedly, impacts to non-tidal forested wetlands and non-tidal channels began on September 11, 2014.
4. DEQ staff conducted a review of Broadnax files and made the following observations:
 - a. Broadnax had not purchased 0.84 wetland compensatory mitigation credits prior to initiating work in impact areas;
 - b. Broadnax had not made a contribution to the Virginia Aquatic Resources Trust Fund to create 85 linear feet of stream channel prior to initiating work in impact areas;
 - c. Broadnax had not notified DEQ at least 10 days prior to initiating work in impact areas; and
 - d. Broadnax had not submitted construction monitoring reports to DEQ at the end of the first, second and third month after initiating work in impact areas.
5. Part II.A.4 of the Permit requires Broadnax to submit to DEQ documentation of wetland compensatory mitigation bank credit purchases and the payment of an in-lieu fee fund to create stream channel prior to initiating work in impact areas.
6. Part II.E.2 of the Permit requires Broadnax to notify DEQ in writing at least 10 days prior to initiating work in impact areas.
7. Part II.B.1 and Part II.E.3 of the Permit require Broadnax to monitor, document and submit to DEQ construction monitoring reports at the end of the first, second and third months after initiating work in impact areas and then every six months thereafter.
8. On December 12, 2014, Broadnax submitted to DEQ a request to change wetland compensatory mitigation banks and to remove the construction monitoring requirements from the Permit. In addition, Broadnax submitted an updated Virginia Aquatic Resources Trust Fund quote.
9. On January 9, 2015, DEQ issued Broadnax a NOV for the violation of Part II.A.4, Part II.E.2, Part II.B.1 and Part II.E.3 of the Permit.
10. On January 22, 2015, Department staff met with representatives of Broadnax to discuss the NOV.
11. Based on the results of the inspections, the documentation submitted by Broadnax on December 12, 2014 and January 22, 2015 meeting, the Board concludes that Broadnax has

violated Part II.A.4, Part II.E.2, Part II.B.1 and Part II.E.3, as described in paragraphs C(3) through C(7), above.

12. On January 28, 2015 DEQ approved a change in wetland compensatory mitigation banks and changed the Permit requirements for construction monitoring as requested by Broadnax. On February 10, 2015, Broadnax submitted documentation that the 0.84 wetland compensatory mitigation bank credits and had made a contribution to the Virginia Aquatic Resources Trust Fund to create 85 linear feet of stream channel.
13. Broadnax has submitted documentation that verifies that the violations described in paragraphs C(3) through C(7), above, Broadnax have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Broadnax, and Broadnax agrees to pay a civil charge of \$12,884.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Broadnax shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Broadnax shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Broadnax for good cause shown by Broadnax, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in the NOV dated January 9, 2015. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Broadnax admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Broadnax consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Broadnax declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Broadnax to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Broadnax shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Broadnax shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Broadnax shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Broadnax. Nevertheless, Broadnax agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Broadnax has completed all of the requirements of the Order;
 - b. Broadnax petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Broadnax.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Broadnax from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Broadnax and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Broadnax certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Broadnax to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Broadnax.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Broadnax voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2015.

Maria R. Nold, Regional Director

Department of Environmental Quality

Broadnax, LLC voluntarily agrees to the issuance of this Order.

Date: 5.14.15 By: [Signature] (Person) MEMBER (Title)
Broadnax, LLC

Commonwealth of Virginia
City/County of VA Beach

The foregoing document was signed and acknowledged before me this 14th day of May,
2015, by Douglas W Fuller who is
member of Broadnax, LLC on behalf of the company.

[Signature]
Notary Public

7208059
Registration No.

My commission expires: 2/29/16

Notary seal:



Brian C. Robertson
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #7208059
My Commission Expires
February 29, 2016

